

1
2 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

3 -----X
4 CAROL S. MARCELLIN, Individually :
5 and as Co-Administrator of the :
6 Estate of Charles E. Hollowell, :
7 Deceased, and JESSICA 1:2021
HOLLOWELL-McKAY, as Co-Administrator : cv00704
8 of the Estate or Charles E. Hollowell, :
9 Deceased. :

10
11 PLAINTIFFS, :

12 -against- :

13 HP, INC., and :
14 STAPLES, INC., :
15 :

16 DEFENDANTS.
17 -----X

18 July 9, 2024
19 10:05 a.m.

20 Examination Before Trial of the Plaintiff,
21 CAROL S. MARCELLIN, in the above-captioned
22 matter, held via Zoom Video, before Howard
23 Breshin, a Notary Public of the State of New
24 York.

25 Job No. CS6792515

MARCELLIN

A P P E A R A N C E S:

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BY: MARIA T. MASTRIANO, ESQ.

315 471-6166

MARCELLIN

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS.

221.1 Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule.

All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and deemed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, include a clear statement as to any defect in form or the basis or error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when an objection is made.

A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person.

An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this

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direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

221.3 Communication with the deponent.

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent that the communication is made for the purposes of determining whether the question should not be answered on the grounds set forth in Section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed by a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect thereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

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MARCELLIN

C A R O L M A R C E L L I N, the Plaintiff
herein, called on behalf of the Defendants,
having been first duly sworn, was examined and
testified as follows:

THE COURT REPORTER: Can I have
your name and address for the record.

THE WITNESS: Carol Sharon
Marcellin, 192 Bells Brook Road in
Ceres, New York, 11721.

EXAMINATION BY

MR. LEVITES:

Q. Ms. Marcellin, my name is Benjamin
Levites and I represent HP Inc. in this case and
as with your previous deposition, I am here to
ask you some questions about your lawsuit against
HP and Staples concerning a fire on January 24th,
2020.

With us today we have counsel for
Staples, Maria Mastriano, the court reporter, Mr.
Breshin, and your attorney, Mr. Schwarz, and
because your last deposition was a little while
ago I am going to go through some of the
procedure again if that's okay with you.

A. All right.

1 MARCELLIN

2 Q. So the goal of today is to produce a
3 written transcript that reads question answer
4 question answer and so on, okay?

5 A. Okay.

6 Q. And in normal conversation I would
7 appreciate when you anticipate the rest of my
8 question, so we can get that transcript that
9 reads question and answer, you need to allow me
10 to finish my question before you give your
11 answer, so if I hold my hand up while I am asking
12 a question I am not trying to be rude, I just
13 want you to know I am still asking questions,
14 okay?

15 A. That's okay.

16 Q. And equally if you are giving an
17 answer, I will make every effort not to begin
18 another question before you are finished, and if
19 I do please let me know you aren't finished,
20 okay?

21 A. Okay.

22 Q. We'll also need you to give verbal
23 answers to please say yes or no instead of
24 nodding, shaking your head. Similarly the
25 transcript won't capture your tone so answers

1 MARCELLIN

2 like ah-hah or uh-huh are not acceptable, is that
3 all right?

4 A. Yes, that's all right.

5 Q. Sometimes I might ask a question that
6 is confusing. You can always tell me you don't
7 understand a question and you would like me to
8 repeat it or rephrase it, but if you do not tell
9 me that you don't understand the question and you
10 proceed to answer it it will be presumed that you
11 did understand the question, is that okay?

12 A. It's okay.

13 Q. We can take a break during the
14 deposition at any time or for any reason. My
15 only request is, if I just asked you a question
16 you answer before we take a break, okay?

17 A. Okay.

18 Q. Can you review the documents I display
19 on the screen here?

20 MR. SCHWARZ: Can she do that?

21 MR. LEVITES: Sometimes people are
22 on a tiny cell phone.

23 MR. SCHWARZ: She can review
24 documents on the screen.

25 Q. Can you review the documents on the

1 MARCELLIN

2 screen, Ms. Marcellin?

3 A. Yes.

4 Q. Just let me know if you need a
5 magnifier, I will be happy to do that.

6 I am going to ask you some
7 questions today about the notebook computer that
8 is the subject of your lawsuit, the HP Pavilion
9 DV6 laptop that you purchased from Staples, so
10 when I say HP notebook we are talking about the
11 subject notebook that you alleged caused the
12 fire, if that's okay with you?

13 A. Okay.

14 Q. Concerning the HP notebook you never
15 changed the battery in that notebook, right?

16 A. Correct, to the best of my
17 recollection.

18 Q. And you never had it serviced or
19 modified?

20 A. No, never.

21 Q. And you never had anyone else change
22 the battery?

23 A. No, not at all.

24 Q. And you never had anyone else service
25 it or modify it?

1 MARCELLIN

2 A. No, not at all.

3 Q. Okay. And after you purchased it do
4 you have any reason to believe that anyone
5 replaced the battery?

6 A. No, I do not.

7 Q. So you have no idea who would have
8 changed the battery if the battery was not
9 original, right?

10 A. Correct.

11 Q. Okay. So now, Ms. Marcellin, I am
12 going to ask you some questions about your 90s
13 Compaq laptop. So you didn't replace the battery
14 in your HP notebook but you do recall buying a
15 replacement battery for your Compaq online at
16 some point before the fire but you don't know
17 when, right?

18 A. Not exactly, early 90s, I would say,
19 when I purchased it.

20 Q. You do recall buying a replacement
21 battery for that Compaq online before the fire?

22 A. Yes.

23 Q. And you put that replacement battery
24 in the Compaq, right?

25 A. Yes, I did.

1 MARCELLIN

2 Q. And the Compaq was in the closet at
3 the time of the fire?

4 A. Yes, it was.

5 Q. And that had the replacement battery
6 that you bought online in it?

7 A. Yes.

8 Q. So after the fire it would have been
9 in the closet, right?

10 A. Yes.

11 Q. You didn't remove it from the closet?

12 A. No.

13 Q. And if it was there at the time of the
14 fire it would have been in the closet after the
15 fire, right?

16 A. Yes.

17 Q. Okay. So now I am going to put
18 Exhibit A up if the computer cooperates here.
19 Let's see. Can you see Exhibit A there?

20 A. You would have to enlarge that.

21 Q. Okay. Let's see if I can enlarge
22 this. Is that bigger now?

23 MR. SCHWARZ: That's better.

24 A. I can't.

25 Q. Pardon? Can you see it?

1 MARCELLIN

2 A. I can see the margin, the Exhibit A
3 posting on there.

4 Q. Okay, great.

5 A. None of the information.

6 Q. Okay, yes. I am going to go to the
7 second page now. So this is your State of New
8 York standard fire claim form and do you
9 recognize this form?

10 A. Yes, I do.

11 Q. Okay, and is that your signature on
12 page 1 under the box stating that "Any statement
13 of claim containing any materially false
14 insurance information is a fraudulent insurance
15 act?"

16 A. Yes, I see that. That is my
17 signature.

18 Q. And is this your handwriting on the
19 form?

20 A. Yes.

21 Q. And this form was in fact true when
22 you submitted it?

23 A. Excuse me, can you repeat?

24 Q. And this form was truthful when you
25 submitted it?

1 MARCELLIN

2 A. Yes.

3 Q. And you intended to tell the truth
4 when you submitted the form, right?

5 A. Yes.

6 Q. This was on February 3rd, 2020?

7 A. Well, according to what I see on the
8 document, yes.

9 Q. Okay. So it would have been 10 days
10 after the fire on January 24th?

11 A. Yes, I guess that would be accurate.

12 Q. Okay. And you were trying to submit a
13 truthful claim when you filled out this form,
14 right?

15 A. Oh definitely, yes.

16 Q. Okay. I am going to turn to the
17 contents evaluation here on the first page here,
18 and if you look here on page one of the contents
19 evaluation form you will see on number 13 it
20 identifies an HP computer that was purchased from
21 Staples, do you see that?

22 A. Yes, I do.

23 Q. And that was purchased in 2011?

24 A. To the best of my recollection, yes.

25 Q. And that's the computer you alleged

1 MARCELLIN

2 caused the fire, right?

3 A. Yes.

4 Q. So as of February 3rd, 2020 when you
5 filled out this form you were aware that you
6 purchased the HP notebook in 2011 from Staples?

7 A. Yes.

8 Q. And it was eight or so years old at
9 the time of the fire as you indicated here?

10 A. It was what?

11 Q. It was eight or so years old at the
12 time of the fire as you indicated here?

13 A. Yes.

14 Q. Okay. So is it your testimony that in
15 those eight years you never replaced the battery?

16 A. That's correct.

17 Q. Okay. And, Ms. Marcellin, you
18 purchased this HP notebook as a floor model, is
19 that correct?

20 A. Yes.

21 Q. And it didn't have a box?

22 A. Correct.

23 Q. It had no warnings?

24 A. No.

25 Q. It had no manual?

1 MARCELLIN

2 A. Not to my recollection, no.

3 Q. You only got the power cord?

4 A. Correct.

5 Q. But you did think it was new, right?

6 A. At the time, yes.

7 MR. LEVITES: Okay, I think that
8 concludes my questions, ms. Marcellin.
9 I am going to take a look at my notes
10 here. I am going to turn it over to
11 Ms. Mastriano and your attorney Mr.
12 Schwarz who may also have some
13 additional questions. Thank you.

14 THE WITNESS: Thank you.

15 EXAMINATION BY

16 MS. MASTRIANO:

17 Q. Can you hear me?

18 A. Yes, I can.

19 Q. Okay sorry, I was on mute. Ms.
20 Marcellin, you may remember me, my name is Maria
21 Mastriano, I represent Staples in this matter and
22 I only have a couple of questions for you.

23 The first is, I want to follow up
24 on the something you said. Counsel asked you if
25 this was a new computer when you bought it and

1 MARCELLIN

2 you said you thought so at the time you purchased
3 it. Today, did you think it was a new computer
4 when you bought it?

5 A. I have no way of actually knowing
6 whether it was or not. It was represented to me
7 as new when I purchased it.

8 Q. Okay. And you had no reason to think
9 otherwise that it wasn't a new computer when you
10 bought it?

11 A. Correct.

12 Q. And as of today you have no reason to
13 believe that it wasn't new when you bought it,
14 correct?

15 A. Correct.

16 MS. MASTRIANO: I think if you can
17 just give me two minutes, if we can go
18 off the record because counsel asked
19 almost all the questions I had to ask
20 you so I want to see what I have left.
21 Can we take a two minute break so you
22 don't have to watch me do that process?

23 THE WITNESS: Certainly.

24 (Recess.)

25 Q. I am going to go back to something

1 MARCELLIN

2 counsel previously asked you.

3 You said you bought a floor model
4 for the subject laptop, is that correct?

5 A. Yes.

6 Q. Did you get a discount on the laptop,
7 do you remember?

8 A. No, there was no mention of a discount
9 or a sales price or anything like that. I just
10 assumed it was a new laptop.

11 Q. Do you have a specific memory of
12 buying this laptop at Staples, the subject
13 laptop?

14 A. Vaguely now, but yes.

15 Q. What I am wondering, I know there was
16 a, you know, there was some inconsistencies with
17 the purchase date and so forth. I am wondering,
18 you bought multiple laptops. You bought a
19 laptop, the subject laptop and the Compaq laptop,
20 correct?

21 A. The Compaq was much earlier, in the
22 early 90s, as I recall.

23 Q. Then you bought a desktop, is that
24 correct as well?

25 A. Yes, I did and I don't recall the date

1 MARCELLIN

2 on that but it was prior to the laptop.

3 Q. Okay. And then you bought a laptop in
4 2019, is that correct?

5 A. Yes.

6 Q. Okay. What I am wondering is, do you
7 have a specific recollection that you bought the
8 subject laptop as a floor model versus those
9 other computers that we just talked about, could
10 it have been one of the other computers you
11 bought as a floor model?

12 A. No.

13 Q. And how do you know that?

14 A. Actually the case on the computers
15 were a totally different color. One was a much
16 smaller unit than the one I purchased, I believe.
17 At that time the subject laptop was I think a 17
18 inch which was bigger than what I had before. I
19 do recall the process of purchasing it to a
20 degree.

21 Q. Did you say it had a case on it?

22 A. Well, just the case that is built onto
23 it, you know.

24 Q. So you are saying the actual computer
25 or are you saying a carrying case?

1 MARCELLIN

2 A. No, only a carrying case, the actual
3 computer metal case.

4 Q. Okay. Did you ever ask for-- you said
5 it was a floor model. Did you ever ask for the
6 manuals or for a box to carry it out in?

7 A. No. I used a cart to take it to my
8 car.

9 Q. Did you ever ask for a mouse or a
10 mouse pad or anything like that?

11 A. I know I didn't ask but I think that
12 was part of the equipment that came with it.

13 Q. Okay. So you think when you purchased
14 it it had a power cord, correct?

15 A. Yes, a power cord and a mouse.

16 Q. Ms. Marcellin, was the subject laptop
17 solely for your use?

18 A. Yes.

19 Q. Do you ever remember anybody else
20 using that computer?

21 A. No, not at all.

22 Q. I think you already said this. From
23 the time-- let me check. I want to make sure I
24 got your testimony correct.

25 From the time that you bought it

1 MARCELLIN

2 in February or March of 2011 until the date of
3 the fire, had you ever replaced the battery in
4 the subject laptop?

5 A. No, I did not.

6 Q. From the time that you bought the
7 laptop until the date of the fire did you ever
8 have Staples perform any maintenance or repair on
9 that laptop?

10 A. No, I did not.

11 Q. From the time you bought it, the
12 subject laptop until the date of the fire did you
13 ever bring it in to Staples for any type of
14 alteration, service, anything? Did you ever
15 bring that computer back to Staples for them to
16 service it in any way?

17 A. No, I did not.

18 Q. Do you remember on the subject laptop
19 how you would remove the battery, do you know?

20 A. I do not.

21 Q. Do you know if it had screws that you
22 had to unscrew it or if it was one that would pop
23 out and you can pop in another one?

24 A. It definitely didn't have the pop-out
25 like the Compaq did.

1 MARCELLIN

2 Q. How do you know that? How do you
3 remember that?

4 A. Well, you pick your laptop up when you
5 are traveling with it at any time and obviously
6 you can see the bottom of the laptop, you know,
7 from toting it around, and the Compaq of course I
8 found it very simple when I turned that one over
9 that it was very much like replacing the battery
10 in your TV remote.

11 Q. Okay. Did you ever turn over the
12 subject laptop to take a look at how you could
13 replace the battery even if you didn't? Did you
14 ever look to see how you could?

15 A. No, never had that in mind. It wasn't
16 functioning as well as it should have at the time
17 so no, I would not have gone to that extreme.

18 MS. MASTRIANO: Thank you, Ms.
19 Marcellin, I don't think I have any
20 other questions. I don't know if
21 counsel has.

22 MR. SCHWARZ: I have no questions.

23 THE COURT REPORTER: Maria, I
24 assume you are ordering the transcript
25 as well?

MARCELLIN

MS. MASTRIANO: Yes, please.

(Time noted: 10:25 a.m.)

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1 JURAT

2 STATE OF NEW YORK)

ss:

3 COUNTY OF WESTCHESTER)

4 I, Carol Marcellin, hereby certify
5 that having been first duly sworn to
6 testify to the truth, gave the above
7 deposition, which was recorded
8 stenographically and reduced to this
9 original transcript.

10 I FURTHER CERTIFY that the
11 foregoing transcript is a true and
12 correct transcript of the testimony
13 given by me at the time and place
14 specified hereinbefore.

15 I FURTHER CERTIFY that any
16 corrections or changes to this
17 testimony have been made by me on the
18 Correction Sheet, which has also been
19 signed by me before a Notary Public.

20 _____
21 Subscribed and sworn to before me
22 this day of 20
23 NOTARY PUBLIC
24
25

Job No. CS6792515

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3 EXAMINATION BY MS. MASTRIANO 14

4 EXHIBIT NO. DESCRIPTION PAGE

5 N/A

6 DATA REQUESTED

N/A

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CERTIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I, HOWARD BRESHIN, a Court Reporter
and Notary Public within and for the State of New
York, do hereby certify:

That I reported the proceedings that
are hereinbefore set forth, and that such
transcript is a true and accurate record of said
proceedings.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand.



HOWARD BRESHIN,
COURT REPORTER

[& - bought]

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[record - succinctly]

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[suggest - zoom]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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